
UTAH LABOR COMMISSION

TIFFANI J. LALOR,

Petitioner,

vs.

**HIGHLAND COVE RETIREMENT and
OLD REPUBLIC INSURANCE CO.,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISIONS**

Case No. 06-0431

Highland Cove Retirement (“Highland” hereafter) and Gallagher Bassett ask the Utah Labor Commission to review Administrative Law Judge Marlowe's entry of default against Highland and Old Republic Insurance Co. (“Old Republic”) and award of benefits to Tiffani J. Lalor under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12 and §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Ms. Lalor filed an application for hearing with the Commission’s Adjudication Division claiming workers’ compensation benefits for injuries allegedly suffered while working for Highland. Ms. Lalor’s application listed Highland as her employer and Gallagher Bassett as Highland’s workers’ compensation insurance carrier.

On receipt of Ms. Lalor’s application, the Adjudication Division followed its usual practice of asking the Commission’s Industrial Accidents Division to verify the identity of Highland’s workers’ compensation insurance carrier.¹ The Industrial Accidents Division reported that Highland was insured by Old Republic. The Adjudication Division therefore named Highland and Old Republic as the respondents to Ms. Lalor’s workers’ compensation claim. The Adjudication Division then mailed notice of Ms. Lalor’s claim to Highland and Old Republic at their respective addresses of record, with instructions to file their answers to Ms. Lalor’s claim within 30 days or risk entry of default.

¹ Pursuant to §34A-2-205 of the Utah Workers’ Compensation Act, workers’ compensation insurance companies must report each employer for whom coverage is provided to the Industrial Accidents Division. Also pursuant to §34A-2-205, such coverage remains in effect by operation of law until the insurance company files a notice of cancellation with the Industrial Accidents Division.

ORDER AFFIRMING ALJ'S DECISIONS
TIFFANI J. LALOR
PAGE 2 OF 3

Neither Highland nor Old Republic filed an answer to Ms. Lalor's claim. On July 17, 2006, Judge Marlowe entered their default. On July 20, 2006, Highland and Gallagher Bassett asked Judge Marlowe to set aside Highland and Old Republic's default. In support of this request, Highland and Gallagher Bassett asserted that Gallagher Bassett was responsible for "adjusting and handling claims of Highland Cove Retirement" and that Gallagher Bassett did not receive the Adjudication Division's notice of Ms. Lalor's claim until July 18, 2006.

Judge Marlowe denied Highland and Gallagher Bassett's request for relief from default. Judge Marlowe then issued her decision on the merits of Ms. Lalor's claim, finding Ms. Lalor eligible for benefits and holding Highland and Old Republic liable to pay those benefits.

Highland and Gallagher Bassett now ask the Commission to set aside Judge Marlowe's orders entering default and awarding benefits to Ms. Lalor, on the grounds that Gallagher Bassett did not receive notice of Ms. Lalor's claim and, therefore, had no opportunity to defend against it.

DISCUSSION

With respect to Highland, there is no question it was Ms. Lalor's employer at the time of her accident and, therefore, correctly named as a respondent to Ms. Lalor's workers' compensation claim. Highland does not assert that **it** did not received notice of Ms. Lalor's claim, and the record is clear that Highland failed to answer that claim. Highland has not explained this failure.

Likewise, Old Republic's reports to the Industrial Accidents Division establish that Old Republic was Highland's workers' compensation carrier at the time of Ms. Lalor's accident. As such, Old Republic was correctly named as a respondent to Ms. Lalor's claim. It appears that Old Republic received proper notice of Ms. Lalor's claim, but failed to answer. Old Republic has not requested relief from its liability in this matter.

As to Gallagher Bassett, it asserts that it is Highland's workers' compensation insurance carrier and, therefore, should have been named as a respondent to Ms. Lalor's workers' compensation claim. However, Gallagher Bassett is not approved by the Utah Insurance Commission as a workers' compensation insurance carrier in Utah. Furthermore, the Industrial Accidents Division's records do not indicate that Gallagher Bassett was Highland's insurance carrier. From the information available, the Commission concludes that Gallagher Bassett provided adjusting and management services to Highland or Old Republic, but was not itself liable for Ms. Lalor's benefits or a proper party to the adjudication of Ms. Lalor's claim.² Furthermore, Judge Marlowe's orders are not directed against Gallagher Bassett.

² This is **not** to say an insurance carrier cannot designate a company such as Gallagher Bassett as its agent for service of notice and other purposes in workers' compensation proceedings. But, in this case, there is no indication that Old Republic ever designated Gallagher Bassett as its agent.

ORDER AFFIRMING ALJ'S DECISIONS
TIFFANI J. LALOR
PAGE 3 OF 3

In summary, the Commission finds that Highland and Old Republic were proper respondents to Ms. Lalor's claim for workers' compensation benefits. They both received notice of Ms. Lalor's claim, but failed to answer. Judge Marlowe properly entered their default and ordered them to pay Ms. Lalor's benefits. Old Republic has not requested relief from that liability; Highland has requested relief, but has not show that it is entitled to such relief. As to Gallagher Bassett, it has never been held in default, has never been ordered to pay any benefits, and is not a party to these proceedings. In light of the foregoing, the Commission finds no basis to disturb Judge Marlowe's orders.

ORDER

The Commission denies Highland and Gallagher Basset's request for relief from default. The Commission affirms Judge Marlowe's decision awarding benefits to Ms. Lalor. It is so ordered.

Dated this 21st day of March, 2007.

Sherrie Hayashi
Utah Labor Commissioner